

Introduced by Senator Corbett

February 13, 2012

An act to amend Section 580b of the Code of Civil Procedure, relating to deficiency judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, as introduced, Corbett. Deficiency judgments.

Existing law provides that no deficiency judgment shall lie following a judicial foreclosure with respect to, among other things, a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of real property, or under a deed of trust or mortgage on a dwelling to secure repayment of a purchase money loan which was in fact used to pay all or part of the purchase price of that dwelling.

This bill would additionally provide, as defined, that a purchase money loan does not lose that status and the protection from deficiency liability, if, among other things, it is renewed, refinanced, consolidated, restructured, modified, assigned, or assumed on or after January 1, 2013. The bill would also provide, however, that the protection from deficiency liability for a purchase money obligation extends only to the outstanding amount of the purchase money obligation, and that the obligor has the burden of establishing that amount, as specified. The bill would provide that a deficiency judgment may lie in certain circumstances where a vendor has subordinated its loan to a construction loan for a commercial project, the construction loan has funded a substantial portion of the project, and the construction lender has foreclosed on the property, extinguishing all or part of the vendor's subordinated lien.

The bill would state the intent of the Legislature in amending these provisions to codify the holding in *Spangler v. Memler* (1972) 7 Cal.3d 603, as construed by *DeBerard Properties, Inc. v. Lim* (1999) 20 Cal.4th 659.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 580b of the Code of Civil Procedure is
2 amended to read:

3 580b. (a) No deficiency judgment shall lie in any event after
4 (1) a sale of real property or an estate for years therein for failure
5 of the purchaser to complete his or her contract of sale, or (2)
6 *except as provided in subdivision (e)*, under a deed of trust or
7 mortgage given to the vendor to secure payment of the balance of
8 the purchase price of that real property or estate for years therein,
9 or (3) ~~under a deed of trust or mortgage on a dwelling for not more~~
10 ~~than four families given to a lender to secure repayment of a loan~~
11 ~~which was in fact used to pay all or part of the purchase price of~~
12 ~~that dwelling occupied, entirely or in part, by the purchaser~~
13 *purchase money obligation.*

14 (b) *A purchase money obligation does not lose its status as such*
15 *in any of the following circumstances:*

16 (1) *The collateral securing the purchase money obligation also*
17 *secures an obligation that is not a purchase money obligation.*

18 (2) *The purchase money obligation has been renewed,*
19 *refinanced, consolidated, restructured, modified, assigned, or*
20 *assumed on or after January 1, 2013.*

21 (c) *The protection against deficiency liability provided by this*
22 *section with respect to a purchase money obligation extends only*
23 *to the amount of the purchase money obligation remaining*
24 *outstanding against a qualified dwelling. An obligor seeking that*
25 *protection has the burden of establishing the amount of the*
26 *purchase money obligation remaining outstanding against a*
27 *qualified dwelling. Any payments that have been applied to the*
28 *principal balance due on any loan for which that protection is*
29 *sought shall be deemed to first have reduced the outstanding*
30 *principal balance of the obligor's purchase money obligation, and*

1 *then to have reduced the remaining outstanding principal balance*
2 *of the loan.*

3 *(d) For purposes of this section, a “purchase money obligation”*
4 *means an obligation secured by a deed of trust or mortgage on a*
5 *qualified dwelling. For purposes of this section, a “qualified*
6 *dwelling” means a dwelling for not more than four families as to*
7 *which a deed of trust or mortgage has been given to a lender to*
8 *secure repayment of a loan which was in fact used to pay all or*
9 *part of the purchase price of that dwelling occupied, entirely or*
10 *in part, by the purchaser. A loan that is used to refinance a*
11 *purchase money obligation is a purchase money obligation for all*
12 *amounts used to reduce or discharge the then-outstanding principal*
13 *of the original purchase money loan or a subsequent purchase*
14 *money loan, so long as the loan is secured by the qualified*
15 *dwelling.*

16 *(e) A deficiency judgment may lie if all of the following occur:*

17 *(1) The vendor has contractually subordinated his or her lien*
18 *to the lien of a construction lender.*

19 *(2) The construction loan involves a commercial project that*
20 *contemplates a material change in the use of the real property, or*
21 *a material increase in intensity of the existing use of the real*
22 *property.*

23 *(3) The construction lender has funded a substantial portion of*
24 *the project.*

25 *(4) The construction lender has foreclosed on the property,*
26 *extinguishing all or part of the lien held by the vendor.*

27 ~~Where~~

28 *(f) Where both a chattel mortgage and a deed of trust or*
29 *mortgage have been given to secure payment of the balance of the*
30 *combined purchase price of both real and personal property, no*
31 *deficiency judgment shall lie at any time under any one thereof if*
32 *no deficiency judgment would lie under the deed of trust or*
33 *mortgage on the real property or estate for years therein.*

34 SEC. 2. It is the intent of the Legislature in amending Section
35 580b of the Code of Civil Procedure in this act to codify the
36 holding in *Spangler v. Memler* (1972) 7 Cal.3d 603, as construed
37 by *DeBerard Properties, Inc. v. Lim* (1999) 20 Cal.4th 659.